

**UNITED STATES OF AMERICA**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

<b>Regulatory Oversight Of</b>	)	
<b>Broadband Over Powerlines</b>	)	<b>FCC Docket No. 04-37</b>
<b>(BPL) Operations</b>	)	

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**ADDITIONAL REPLY COMMENTS  
OF THE NATIONAL ANTENNA CONSORTIUM (NAC)  
AND THE AMHERST ALLIANCE**

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ADDITIONAL REPLY COMMENTS  
OF THE NATIONAL ANTENNA CONSORTIUM (NAC)  
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The NATIONAL ANTENNA CONSORTIUM (NAC) is an association, representing those who own, use and/or build radio antennas as well as those who own, lease and/or build communications towers. THE AMHERST ALLIANCE is a Net-based, national citizens' advocacy group for Low Power Radio in particular and media reform in general.

NAC and Amherst have already made several joint filings in FCC Docket 04-37, including 2 Motions. We hereby submit another set of Additional Reply Comments.

**Incorporation By Reference Of Requests  
In The NAC/Amherst Amended Motion Of June 22**

Today, NAC and Amherst filed an Amended Motion For Re-Issuance Of Certain Proposed Rule Provisions And An Extension Of Time In FCC Docket 04-37. The Amended Motion seeks re-issuance, for public comment, of the proposed rule's provisions on BPL interference. We ask the FCC to address, in the re-issued provisions, a total of 20 matters which are currently not clear -- or not addressed at all.

Based on information in the Phase II report on BPL interference by the National Telecommunications and Information Administration (NTIA), as released to the public on June 7, our Amended Motion also urges the FCC to issue, for public comment, a *new* proposed rule provision on ionosphere propagation of BPL interference. The requested provision “caps” the number of BPL transmission units in the United States at 500,000, until and unless the FCC issues a final rule to prevent ionosphere propagation.

We incorporate by reference, in these Additional Reply Comments, the full text of our Amended Motion. To the extent (if any) that the FCC chooses *not* to address the issues raised in our Amended Motion through re-issuance, for public comment, of selected proposed rule provisions, we ask the Commission to address these issues during the course of drafting its final rule in FCC Docket 04-37.

**The Need For BPL Database Administration,  
And Perhaps Initial Interference Complaint Resolution,  
By “An Impartial Third Party”**

NAC and THE AMHERST ALLIANCE are in strong agreement with the proposal by COMSEARCH -- in its June 1, 2004 Reply Comments -- that the proposed database of BPL information, as contemplated in the FCC’s proposed new Part 15.109(g), should be administered by “an impartial third party” rather than the BPL service industry itself or members thereof.

The COMSEARCH proposal avoids an obvious conflict-of-interest. Only a modicum of common sense is needed in order to recognize its value.

We recommend that, in setting the eligibility criteria for service as this “impartial third party”, the FCC should permit interested non-profit organizations, as well as private sector parties that have no connection to the BPL industry, to compete for the position.

In addition, *if* the FCC itself does not intend to offer its services for initial resolution of BPL interference complaints, we recommend that this function should be performed by the same “impartial third party” which administers the BPL information database. This practice will avoid yet another conflict-of-interest situation.

NAC and Amherst recognize, of course, that the “impartial third party” will require a source of revenue, including a profit margin. To provide this revenue, we advise the Commission to establish *a surcharge* on the sale or lease of BPL services, facilities and/or equipment.

1. During the first year, the surcharge should be the same for all BPL service providers. We suggest setting the surcharge on the basis of *estimated* annual costs for effective resolution of BPL interference complaints, plus a rate of return of 20%.
2. Thereafter, the surcharge should vary from year to year, for each individual BPL service provider, on the basis of the *actual* annual costs for effective resolution of BPL interference complaints, plus a rate of return of 20%. Just as auto insurance premiums are higher for those with higher accident rates, so each year the interference surcharges should be highest for those BPL service providers with the highest incidence of interference complaints. Call it a “market incentive” to avoid causing interference.

**The Need To Expand Previously Proposed  
“BPL-Free Zones”  
Around Certain Facilities**

We reiterate all of the recommendations we have previously submitted to the Commission through our previous Written Comments, Reply Comments, Additional Reply Comments and other documents filed in FCC Docket 04-37.

However, we now modify one of these previous recommendations, as follows:

Based on the NTIA’s finding, reported in its Phase I report, that BPL can interfere with aircraft reception at a distance of “40 kilometers” (or 24 miles), we amend our previous proposal that BPL operations should be prohibited within 20 miles of any ground-to-air communications antennas, airports and military bases (including those bases affiliated with the National Guard). We now propose that BPL operations should be prohibited within *30 miles* of such facilities.

30 miles equals 24 miles plus a “safety margin” of 6 miles -- or 25%.

For the sake of caution, we also amend our proposal to prohibit BPL operations within 20 miles of any ship-to-shore communications antennas. We now urge the FCC to establish a *30-mile* “BPL-Free Zone” around ship-to-shore communications antennas as well.

### **Conclusion**

For the reasons set forth herein, and in related documents we have filed in FCC Docket 04-37, NAC and THE AMHERST ALLIANCE urge the FCC to act favorably upon all of the recommendations made in these Additional Reply Comments -- including the incorporated requests to the FCC in our June 22, 2004 Amended Motion.

Respectfully submitted,

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